

**COOPERATIVE FUNDING AGREEMENT
BETWEEN
CITY OF SUNNYVALE AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR FRANCES STREET TRANSIT CORRIDOR PROJECT**

This Cooperative Funding Agreement is entered into as of _____, 2004, between the City of Sunnyvale (City) and the Santa Clara Valley Transportation Authority (VTA) to establish the terms and conditions under which Federal Transit Administration (FTA) Section 5307 Transit Enhancement grant funds received by the VTA will be provided to the City for the Frances Street Transit Corridor Project.

RECITALS

WHEREAS, the CITY is a duly established municipal corporation organized and existing under the laws of the State of California; and

WHEREAS, the VTA is a special district created pursuant to the California Public Utilities Code Sections 100,000, *et. seq.*; and

WHEREAS, the CITY is the Project Sponsor for the Frances Street Transit Corridor Project ("Project"), a public transportation project; but is not an eligible Grantee for Federal Transit Administration (FTA) funds; and

WHEREAS, the VTA is an eligible Grantee for FTA funds and will utilize project improvements for operation of its transit services, and therefore desires to contribute Grant Funds to portions of the Project hereinafter referred to as transit enhancements; and

WHEREAS, at the request of VTA, the Metropolitan Transportation Commission has programmed \$178,000 in FFY 2004 FTA Transit Enhancement grant funds ("Grant Funds") for the Project in the FFY 2004 Federal Transportation Improvement Program; and

WHEREAS, the parties hereto desire to establish and agree to the terms and conditions under which the Grant Funds received by VTA shall be provided to the CITY for use for the Project improvements; and

NOW THEREFORE, in consideration of the mutual benefits and obligations herein, the CITY and VTA agree as follows:

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I. DESCRIPTION OF PROJECT

This Project consists of a pedestrian scale transit corridor including enhanced bus transit facilities in downtown Sunnyvale on Frances Street between Capella Way/Town and Country Way and Evelyn Avenue.

The Grant Funds provided shall be used for the sole purpose of implementing transit enhancements meeting FTA Section 5307 Transit Enhancement criteria such as enhanced concrete crosswalk paving, enhanced side walks, and curb and gutters; custom bus shelters; improved lighting; and other passenger amenities, including bike racks.

CITY shall implement the Project in accordance with this agreement, and the Exhibits listed below, which are incorporated into this Agreement as though fully set forth:

Exhibit A, Project Specific Information
Exhibit B, Overall Project Scope
Exhibit C, Grant Project Budget
Exhibit D, FTA Grant Agreement

The CITY shall manage the design, engineering and construction of the Project. Before commencing design work, the parties shall mutually agree on the scope of the Project and the improvements. CITY shall design Project; prepare the specifications and construction documents. The design, specifications, and construction documents shall be submitted to VTA for review, comment, and approval.

II. FUNDING

The total Budget for the project is \$758,700. The overall funding is composed of \$429,000 in FY03 Bay Area Air Quality Management District TFCA funds, \$151,700 in CITY funds, and \$178,000 in FFY04 FTA Transit Enhancement grant funds.

For purposes of the Federal grant, the total grant allowable cost of the project is \$222,500. VTA shall provide Grant Funds to the CITY for the work in an amount not to exceed \$178,000 (80%). CITY shall contribute local matching funds in the amount of \$44,500 (20%).

If the actual cost of the Project work exceeds the Federal Grant funds available, CITY shall provide the additional funding necessary to complete the Project work. No VTA funds (as distinct from Grant funds) shall be used to fund the Project work.

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At project completion, if actual costs are less than the Budget, then savings shall be shared on a pro-rata basis between funding partners. CITY local match savings shall remain with the CITY. City's interest in the Federal funds will terminate upon

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Project work completion or upon VTA's close out of the Federal grant funding the work, whichever occurs first.

III. IMPLEMENTATION SCHEDULE

A supplemental agreement shall be entered into between the parties for the long-term maintenance, and operations of the Project. Said supplemental agreement shall be executed before the Project construction contract is advertised for public bid.

CITY shall commence design /PSE by October 1, 2004, and shall complete same by June 1, 2005. City shall commence construction by September 1, 2005 and complete same by January 1, 2007.

IV. COMPLIANCE WITH ALL LAWS

CITY shall comply with all laws, statutes, ordinances, rules, regulations or requirements of the federal, state and local governments, and any agencies thereof, which relate to or in any manner affect the performance of this Agreement, including 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," FTA Circular 4220.1D FTA Circular 5010.1C and the FTA Master Agreement (Form FTA MA (10), October 1, 2003. All requirements imposed upon VTA as a federal "grantee" or "recipient" contained in the FTA Grant Agreement, Exhibit E, are hereby imposed upon CITY, and those rights reserved by DOT, FTA or Government are hereby reserved by VTA.

V. ACCOMPLISHMENT OF WORK

CITY shall accomplish the work in a timely manner and in conformance with the schedule and Budget contained herein, and in compliance with all other terms and conditions of this Agreement. CITY shall furnish VTA with copies of all contracts, and any amendments thereto, entered into between City and third parties for performance of the work.

VI. RECORD RETENTION AND AUDIT

- A. Record Retention: CITY shall retain intact and accessible all data, documents, reports, records, contracts and supporting materials relating to the Project during the course of the Project and for three years thereafter. If any litigation, claim, , audit or other action related to the Project is started before the end of said three-year period, CITY shall retain all Records relating thereto for three years after completion and resolution of the action.
- B. Access to Records: Upon request, CITY agrees to permit VTA and the authorized representatives of the Secretary of Transportation and the Comptroller General of the United States, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the CITY and its contractors

pertaining to the Project. In accordance with 49 U.S.C. § 5325(a), the CITY agrees to require each third party contractor to permit VTA and the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract and to audit the books, records, and accounts involving that third party contract.

- C. Audit: CITY will provide thorough and complete accounting for all funds expended in the performance of the work, consistent with 49 Code of Federal Regulations, Part 18.37(b). CITY shall be responsible for meeting audit requirements of the “Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et, seq., in accordance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”, and any revision or supplement thereto. CITY shall annually submit to VTA one copy of its audit completed in accordance with the above-described single audit requirements within 30 days after completion of the audit, but not later than one year after the end of the audit period.

VII. INVOICING

VTA shall reimburse CITY for those services and expenses required to perform the work in accordance with the Grant Budget.

Progress payments to CITY shall not begin until the Grant Funds have been awarded and are available to VTA for draw down. Once the Grant Funds are available, CITY shall invoice VTA once a month for the work. Each invoice shall be accompanied by all applicable supporting documentation, such as consultant invoices. Progress payments shall be made for actual work performed. No advance payments shall be made. VTA shall pay CITY within 30 days after receipt of the invoice.

VIII. PROJECT REPORTING

- A. Quarterly Progress Reporting: Each quarter, CITY shall prepare and submit a Narrative Progress Report (NPR) and Financial Status Report (FSR) as described below:
1. Narrative Progress Report (NPR): This quarterly report shall contain a narrative description of: specification preparation; bid solicitation; resolution of any protests; change orders and claims in the amount of \$100,000 or greater; any contract awards; work completed during the period; tasks expected to be performed during the next period; and explanations of problems or delays encountered or anticipated. Narrative progress reports shall be emailed to VTA as a Microsoft Word attachment as a part of Financial Status Report submittals described below.

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2. Financial Status Report (FSR):

This report shall include, at a minimum, a balance sheet and a project expenditure statement by line item code. The Reports shall be submitted for each quarter until completion and final closeout of the work.

B. Deadline for Quarterly Project Reporting:

The Narrative Progress Report (NPR) and the Financial Status Report (FSR) shall be submitted for the following calendar quarters:

January 1 – March 31
April 1 – June 30
July 1 – September 30
October 1 – December 31

The Reports shall be delivered to K. Jeffery Ballou, Senior Transportation Planner – Programming and Grants, within 12 calendar days after the end of each reporting period.

IX. SEPARATE ACCOUNTING

CITY shall establish and maintain for the work either a separate set of accounts, or separate accounts within the framework of an established accounting system that can be identified with the work, in accordance with applicable Federal regulations and other requirements that FTA may impose. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents related in whole or in part to the work shall be clearly identified, readily accessible and available to VTA or FTA upon their request, and, to the extent feasible, kept separate from documents not related to the work.

X. CONTRACT BID PROCEDURE

CITY shall advertise, bid and award the work in accordance with the requirements of 49 CFR Section 18.36 and FTA Circular 4220.1D.

CITY shall include FTA requirements in the bid documents including requirements for DBE (Disadvantaged Business Enterprise) participation.

XI. PROJECT IMPLEMENTATION AND ACCEPTANCE

CITY shall administer the work, pay contractors and provide contract administration services for the work in accordance with the scope, cost and schedule set forth in the Exhibits and in accordance with all other provisions outlined in this Agreement. VTA shall monitor the progress of the Grant Project and shall be apprised of any contract amendments, cost overruns or contractor claims. Upon substantial

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completion, CITY shall schedule a meeting with VTA to review final contractor/consultant deliverables evidencing work completion and to develop a final punch list of items to be completed.

XII. OWNERSHIP

CITY agrees to comply with Federal requirements relating to the ownership, management, and use of Federally acquired real property, equipment, and supplies.

XIII. CONTRACT AMENDMENTS AND CLAIM SETTLEMENTS

Those contract amendments and claim settlements not meeting the requirements for eligibility, as set forth in FTA Circular 5010.1C and C4220.1D shall not be reimbursed by VTA.

XIV. WORK CLOSEOUT

CITY shall complete work Closeout activities in accordance with FTA Circular 5010.1C within 60 calendar days of the completion of the grant funded scope of work, or upon VTA's direction, whichever occurs first.

XV. INDEMNIFICATION / MUTUAL HOLD HARMLESS

Pursuant to Government Code Section 895.4, the parties hereto shall indemnify and hold each other, their officers, employees and agents harmless from any damage or liability imposed for injury (as defined by Government Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, employees or agent, under or in connection with any work, authority or jurisdiction delegated to such other parties under this Agreement.

XVI. NOTICE

Any notices required to be given hereunder, or which any party may wish to give, shall be in writing and shall be personally delivered or sent by fax, certified or registered mail, postage prepaid, addressed as follows:

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088
Attention: City Manager

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And

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134
Attention: Carolyn Gonot, Chief Development Officer

CITY OF SUNNYVALE (CITY)

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY
(VTA)

By: _____
City Manager

By: _____
Peter M. Cipolla
General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Counsel

EXHIBIT A
PROJECT SPECIFIC INFORMATION

1. FTIP Project Title: Sunnyvale Transit Center – Transit Enhancements
2. FTIP Project No.: SCL030015
3. FTIP Project Description: Sunnyvale Transit Center Enhancements
4. MTC Approval Date: March 24, 2004, TIP No. 2003-16
5. FTA/FTA Approval Date: April 16, 2004, TIP No. 2003-16
6. Fed Funding Source: FY 2004 FTA Sect 5307 Transit Enhancement Fund
7. FTA Grant No: CA-90-X250-00
8. Grant Project Scope: 11.93.00 Transit Enhancements
9. Activity Line Item: 11.93.02 Bus shelters/lighting/etc.

10. FTA Grant Budget:

FTA Funding Amount:	\$178,000 (80%)
<u>Local Match (City):</u>	<u>\$ 44,500 (20%)</u>
Total FTA Grant Budget	\$222,500 (100%)

<u>Other Local (City Overmatch)</u>	<u>\$536,200</u>
Total Project Budget	\$758,700

11. Overall Project Budget:

FTA Funding Amount:	\$178,000
Local Match:	
TFCA Regional Funds (Local)	429,000
<u>City of Sunnyvale (Local)</u>	<u>151,700</u>
Total Project Budget:	\$758,700

EXHIBIT B

OVERALL PROJECT SCOPE

The overall project consists of a pedestrian scale transit corridor on Frances Street between Capella Way / Town and Country Way and Evelyn Avenue in Sunnyvale. It will connect pedestrians from seven VTA bus routes to the Sunnyvale Caltrain Multimodal Station, the Historic Sunnyvale Down Town Commercial Center, the Sunnyvale Town Center mall, the Mozart office buildings and the Sunnyvale city plaza currently under construction. This is intended to increase transit use for bus as well as Caltrain, and increase pedestrian and bicycle travel.

The Frances Street Transit Corridor Project will alter the configuration of the street in order to improve the street character and enhance pedestrian access and the pedestrian experience. Sidewalks will be widened and improved with new decorative concrete. Two bus shelters will be installed on the east side of the street, and one on the west side. The style and design of the bus shelters will relate to the design of the Downtown Plaza on the west side of the street. Bicycle facilities for transit riders will be installed, specifically a four-bike wave rack, with a u-shaped design. These will be placed in direct vicinity of the bus shelters and will be sufficiently lit to deter theft. Trees will be planted for shade mostly on the west side of Frances Street because there are already existing trees on the east side. Pedestrian lighting and amenities such as benches and fountains will be installed. They will all meet the design specifications that are proposed with the downtown plaza. Enhanced crosswalks will also be included to provide connections with adjacent uses, and improve the character of the street. The project will also include a VTA bus drivers' restroom.

EXHIBIT C
GRANT PROJECT BUDGET

Revenues

FFY 2004 Section 5307 Transit Enhancement funds:	\$ 178,000	(80%)
City of Sunnyvale local funds:	<u>44,500</u>	<u>(20%)</u>
Total Grant Budget	\$ 222,500	(100%)

Expenditures

Scope: 11.90.00 Transit Enhancements

Activity Line Item:	<u>Federal</u>	<u>Local</u>	<u>Total</u>
11.93.02 Bus Shelters, lighting, etc.	\$178,000	\$44,500	\$222,500

EXHIBIT D
FTA GRANT AGREEMENT

Attached is a copy of the Grant Agreement between the Federal Transit Administration and the Santa Clara Valley Transportation Authority (VTA) awarded on _____ and executed on _____ that provides \$178,000 in FFY 2004 FTA Section 5307 Transit Enhancement funds for the Frances Street Transit Corridor Project.